

REMARKS

Claims 1-32 and 34-41 are pending in this application, with claim 28 being withdrawn from further consideration. By this Amendment, claim 33 is canceled without prejudice to or disclaimer of the subject matter contained therein and claims 1 and 34 are amended. No new matter is added.

Entry of the amendments is proper under 37 CFR §1.116 since the amendments: (a) place the application in condition for allowance for the reasons discussed herein; (b) do not raise any new issue requiring further search and/or consideration as the amendments merely cancel a pending claim and remedy a typographical error; and (c) place the application in better form for appeal, should an appeal be necessary. The amendments are necessary and were not earlier presented because they are made in response to arguments raised in the final rejection. Entry of the amendments is thus respectfully requested.

I. Formal Matters

Applicant acknowledges the withdrawal of the prior drawing objection and §112, second paragraph rejection.

Independent claims 1 and 34 are amended to change "rotably" to --rotatably-- to remedy an obvious typographical error. No new matter is added.

II. Pending Claims Define Patentable Subject Matter

The Office Action rejects claims 1-5, 7-10, 12, 16, 17, 25, 26, 30-35 and 37-41 under 35 U.S.C. §102(b) over U.S. Patent No. 5,391,011 to Gueret (Gueret 011). The Office Action also rejects claims 27 and 36 under 35 U.S.C. §103(a) over Gueret 011, further in view of U.S. Patent No. 5,894,847 to Gueret (Gueret 847). These rejections are respectfully traversed.

Independent claim 33 is canceled. Accordingly, the rejection of this claim is moot.

Independent claim 1 recites an applicator comprising, *inter alia*, a base portion and a handle portion mounted to turn about a fixed axis of rotation, the handle having a longitudinal axis, wherein the axis of rotation and the longitudinal axis are not mutually perpendicular.

Independent method claim 37 is similar to claim 1 and recites a base portion turnable relative to a handle about an axis of rotation that is not perpendicular to the longitudinal axis of the handle.

These are supported, for example, by Applicant's base 10 and handle 20 in Figs. 2-4. As shown in the attached labeled copies of Applicant's Figs. 2-4, handle 20 has a longitudinal axis Y and an axis of rotation R that are displaced by an angle α that is not perpendicular.

Gueret 011 provides a base 20 and a handle 30. As clearly shown by the labeled views of Figs. 1-5 attached, handle 30 has a longitudinal axis (labeled as axis L) and an axis of rotation (labeled axis R). These axes are clearly perpendicular to each other at all rotations as shown by the various views. That is, the angle between axes does not change in Fig. 3 as alleged. Instead, Fig. 3 of Gueret only appears to be an acute angle because of the presentation of a perspective view. In fact, the relationship remains perpendicular as more clearly shown in Fig. 2. This perpendicular relationship can also be seen in Fig. 4, which shows the longitudinal axis L as being in the plane of the paper while the rotational axis R is directed into the paper, a perpendicular relationship.

Because Gueret 011 fails to teach each and every feature of independent claims 1 and 37, these claims and claims dependent therefrom are not anticipated by Gueret 011. Gueret 847 fails to overcome the deficiencies of Gueret 011 with respect to independent claim 1. Therefore, claim 27 is allowable for its dependence on base claim 1 and for the additional features recited therein.

Independent claim 34 recites an applicator comprising, *inter alia*, a base portion and a handle portion mounted on the base portion to turn about a fixed axis of rotation, the handle

portion having a longitudinal axis, wherein an angle between the axis of the base and the axis of the handle portion is always inferior to 90° when the handle is rotated about the axis of rotation.

This is supported, for example, by Applicant's Figs. 2-4, which show a base 10 having an axis Z, handle 20 having a longitudinal axis Y, and an axis of rotation R. As shown by Figs. 3-4 attached, the longitudinal axis Y of the handle 20 and the axis Z of base 10 are always separated by an angle β that is strictly inferior to 90°. That is, through all rotations of the handle, the angle β does not increase to 90° or more. Thus, contrary to statements made in the Office Action, the word always does further limit the claim by specifying that regardless of rotation angle the defined relationship is always strictly inferior to 90°.

Gueret 011 provides a base 20 and a handle 30. As clearly shown by the labeled views of Figs. 1-5 attached, handle 30 has a longitudinal axis (labeled as axis L), an axis of rotation (labeled as axis R), and a base axis (labeled as axis B). Fig. 2 clearly shows the axes of L and B as parallel. Fig. 3 shows the handle bent at an acute angle. However, Fig. 4 shows the longitudinal axis L as being much greater than 90°. Thus, Gueret 011 teaches away from a relationship that is always inferior to 90° during rotation.

Because Gueret 011 fails to teach each and every feature of independent claim 34, this claim and claims dependent therefrom are not anticipated by Gueret 011. Gueret 847 fails to overcome the deficiencies of Gueret 011 with respect to independent claim 34. Therefore, claim 36 is allowable for its dependence on base claim 34 and for the additional features recited therein.

Therefore, Applicant respectfully submits that independent claims 1, 34, and 37 and claims dependent therefrom, are patentable over Gueret 011 alone or in view of Gueret 847. Accordingly, withdrawal of the rejections over Gueret is respectfully requested.

The Office Action also rejects claims 1-6, 10-18, 20, 23, 25-27, 30, 33, 34 and 37-41 under 35 U.S.C. §102(b) over German Patent No. DE 296 14 364 to Strange; rejects claim 19 under 35 U.S.C. §103(a) over Strange in view of U.S. Patent No. 5,815,875 to Yamada; rejects claim 21 under 35 U.S.C. §103(a) over Strange; rejects claim 22 under 35 U.S.C. §103(a) over Strange in view of U.S. Patent No. 4,922,575 to Riemann; rejects claim 24 under 35 U.S.C. §103(a) over Strange in view of U.S. Patent No. 5,137,038 to Kingsford; and rejects claim 29 under 35 U.S.C. §103(a) over Strange in view of U.S. Patent No. 3,164,856 to Samaras et al. (Samaras). These rejections are respectfully traversed.

Independent claim 33 is canceled. Accordingly, the rejection of this claim is moot.

Independent claim 1 recites, *inter alia*, an applicator comprising "a base portion . . . configured for fixing onto a receptacle" and "a handle portion rotatably mounted on the base portion to turn about a fixed axis of rotation, the handle portion having a longitudinal axis, wherein the axis of rotation and the longitudinal axis of the handle portion are not mutually perpendicular."

Stange is not "configured for" fixing onto a receptacle. The Office Action admits that this was not given patentable weight. However, this is a positive recitation of structure to achieve the fixing and must be given patentable weight. That is, claim 1 is more than "capable of" having such a connection, but is instead "configured for" fixing on a receptacle. That is, Applicant's base includes a positive recitation of a fixing structure allowing it to connect to a receptacle. For example, see Applicant's Fig. 4. The base of Stange is not configured for fixing to a receptacle. Instead, Stange is directed to a standalone brush not intended to be fixed. Because Stange fails to teach each and every feature of independent claim 1, this claim and claims dependent therefrom are not anticipated by Stange. The various secondary references fail to overcome the deficiencies of Stange.

Independent claim 34 recites, *inter alia*, an applicator comprising "a handle rotatably mounted on the base portion to turn about a fixed axis of rotation (R), the handle portion having a longitudinal axis (L). . . wherein an angle (β) between the axis of the base portion (B) and the axis of the handle portion (L) is always strictly inferior to 90° when the handle portion is rotated about the axis of rotation."

Applicant respectfully submits that Strange fails to disclose or suggest these claimed features. In particular, it is clear from the attached copy of Stange's Fig. 3 that during rotation the angle (β) become perpendicular (i.e., more than inferior to 90°).

With respect to method claim 37, the Office Action fails to make a prima facie case of anticipation.

Therefore, Applicant respectfully submits that independent claims 1, 34, and 37 and claims dependent therefrom, are patentable over Stange. Accordingly, withdrawal of the rejections over Stange and Stange et al. is respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Rejoinder of claim 28 is respectfully requested in view of the allowability of claim 1 from which it depends. Favorable reconsideration and prompt allowance of claims 1-32 and 34-41 are thus earnestly solicited.

Should the Examiner believe that anything further would be desirable to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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WPB:SPC/jnm

Attachments:

Labeled Copy of Applicant's Figs. 1-6
Labeled Copy of Gueret's Figs. 1-5
Labeled Copy of Stange's Figs. 1-3

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